

# Terms and Conditions for the Repair Service of Kraemer Baumaschinen GmbH & Co. KG (Rheda-Wiedenbrück, Lengerich and Dortmund)

1. **Scope**
  - 1.1. The terms and conditions are applicable to the Repair Service division, i.e. for maintenance activities (inspections, repairs and servicing activities) of construction machinery - by Kraemer Baumaschinen GmbH & Co. KG (hereinafter referred to as Kraemer). The contractual terms and conditions are only applicable vis-à-vis entrepreneurs within the meaning of Section 14 BGB [German Civil Code], public-law legal entities or a special public-law fund pursuant to Section 310 (1) Sentence 1 BGB. For the construction machinery sales and leasing divisions, as well as the spare parts service, specific terms and conditions apply, which only apply supplementally to this.
  - 1.2. Deviating contractual terms and conditions of the customer shall not be recognised by Kraemer, unless a written consent from Kraemer exists.
  - 1.3. For ongoing business relationships, this also applies in the event that Kraemer has not explicitly referred to this during the course of the relationships.
2. **Offers / cost estimates**
  - 2.1. Offers by Kraemer are subject to confirmation.
  - 2.2. Insofar as an estimate of the costs has been made, this estimate is without any obligation, unless the bindingness has been expressly assured in written form.
  - 2.3. Insofar as the respective order is based on a non-binding written estimate of the costs, the customer will be notified immediately, if it transpires during the course of the repair that the cost estimate will be exceeded by more than 25%. Insofar as Kraemer notifies the customer about the excess in written form, the customer may only exercise his cancellation from Section 650 BGB within 3 working days – the date of receipt by Kraemer is relevant.
  - 2.4. Kraemer shall only prepare bindingly guaranteed estimates of anticipated costs at the explicit request of the customer. Unless agreed otherwise, a cost estimate is only binding in written form. The text form is sufficient for this.
  - 2.5. Insofar as a cost estimate is has only been issued verbally or is only a lump-sum amount, without a breakdown of the individual items, no obligation shall ensue for Kraemer from this cost estimate. The regulation of Section 650 BGB also does not apply.
3. **Scope of contract / contract performance**
  - 3.1. In the absence of a written contract signed by both parties, the order confirmation of Kraemer is decisive for the scope of the contract.  
In the absence of explicit instructions, Kraemer shall perform the repairs at its own discretion. Kraemer shall decide, particularly on the basis of efficiency and time criteria, whether a repair will take place by installing new parts, installing repaired parts or whether the existing defective parts will be repaired.
4. **Prices / due date of the compensation / invoicing**
  - 4.1. Any price quotations are stated exclusive of the respective applicable statutory value-added tax.
  - 4.2. Kraemer may request an advance payment from the customer in the amount of the anticipated repair costs (or purchase price with the sale of spare parts). Instead of the advance payment, the customer is entitled to provide a directly enforceable bank guarantee in the requested amount. A request for advance payment shall not constitute a cost estimate within the meaning of Section 650 BGB.
  - 4.3. Upon expiry of the five-day payment period, the customer shall enter into default without a further reminder being necessary. The deadline shall be referred to with the invoice.
  - 4.4. The customer is only permitted to carry out set-offs or retentions with regard to the remuneration claims with undisputed or legally established claims.
  - 4.5. Insofar as the customer is able to claim benefits from third parties in respect of the commissioned repair – particularly compensation benefits from an insurance company – these claims will be assigned to Kraemer in the full amount. Kraemer is entitled to notify the assignment to the third party and request direct payment.
5. **Repair times**
  - 5.1. The indications for repair times are non-binding, as they are based on estimates.
  - 5.2. In the event of unforeseeable operational hindrances - e.g. strike, procurement difficulties for spare parts, delivery or performance delays with upstream suppliers - the binding repair times/dates shall also be extended accordingly.
  - 5.3. A reminder within the meaning of Section 286 BGB, as well as the setting of a grace period within the meaning of Section 281 BGB and Section 323 BGB shall take place explicitly and in writing. A grace period in accordance with Section 281 BGB and 323 BGB must amount to at least 3 weeks. Where a delay is caused by a delivery delay by an upstream supplier, this shall not be regarded as a breach of duty.
  - 5.4. Liability for damage caused by delay shall be based on Point 9.2. However, the amount is limited to 5% of the net repair price, in any case.
6. **Acceptance of the service**
  - 6.1. The customer shall be notified upon completion of the commissioned works. Sending the invoice equates to notification. Upon notification, the right transfers to the customer. The Customer must collect the equipment within 1 week.
  - 6.2.
7. **Reservation of ownership, extended lien**
  - 7.1. Kraemer reserves the ownership of all accessories, replacement and exchanged parts until the receipt of all payments from the order.
  - 7.2. Insofar as the customer is the owner of the machine, Kraemer shall grant the co-ownership of the machine according to the value of the repair service vis-à-vis the fair value of the machine until full payment of the invoice.
  - 7.3. Kraemer shall also be entitled to the contractor's lien due to claims from previously performed works, spare parts deliveries and other works, insofar as they are related to the repair object. For other claims from the business relationship – also from previous contracts – the lien shall only apply insofar as these claims are undisputed or established as final and absolute by a court of law.
  - 7.4. In the event that the customer is not the owner of the machine, Kraemer shall assign all claims from contractual relationship, which entitle him to the possession of the machine. Within the scope of this assignment, Kraemer shall be irrevocably authorised, but not obligated, to fulfilment on behalf of the customer.
8. **Warranty / claims for defects**
  - 8.1. Kraemer shall issue a warranty for repairs using exclusively new parts, subject to the following provisions, whereby the warranty period is limited to 1 year. Insofar as used spare parts are also used for repairs, Kraemer shall not issue a warranty for this.
  - 8.2. Claims for defects shall expire in 12 months after acceptance of the service. Determined defects shall be notified to Kraemer without delay. If the customer improperly performs repairs himself or has them performed by third party, without the consent of Kraemer, the liability of Kraemer shall lapse.
  - 8.3. Regarding the custom production of parts (e.g. hydraulic hoses), it is pointed out that this custom production takes place in accordance with a customer specification (e.g. drawings). The accuracy of these specifications lies within the customer's risk area. If specifications are faulty, this shall not lead to defectiveness of the produced part.
  - 8.4. Kraemer shall have the option to choose between reworking and supplemental delivery, also with the sale of spare parts. The customer shall only be entitled to other claims, insofar as the repair has failed, in spite of respective appropriate setting of a deadline in written form pursuant to Section 440 S. 2 BGB.
  - 8.5. A warranty is issued within the context of the legal provisions for the delivery of spare parts, insofar as Kraemer is regarded as a supplier within the meaning of Section 478 BGB.
  - 8.6. Further claims shall be based on Point 9.
9. **Other liability**
  - 9.1. In the case of culpable infringement of contractual ancillary duties, the regulations of Point 8 and 9.2 shall apply to the exclusion of further claims.
  - 9.2. Insofar as Kraemer is liable for culpably caused damages, on its own merits, damages – also indirect damages – shall only be compensated by Kraemer, regardless of the type and notwithstanding the legal grounds, if:
    - gross culpability or intent exists (liability is excluded for slight negligence) or
    - compensation for damages is asserted due to injury to life, limb or health or
    - significant contractual duties have been culpably breached by Kraemer, the achievement of the contractual purpose is jeopardised and it also involves a typical contractual loss or
    - in those cases where mandatory liability exists under the Product Liability Act or
    - expressly guaranteed characteristics are missing and the purpose of the guarantee was to cover losses that did not occur on the order subject matter itself.Ceteris paribus, liability is excluded.
10. **Final provisions/legal jurisdiction**
  - 10.1. The legal jurisdiction for all agreements and disputes is Rheda-Wiedenbrück as the registered office of Kraemer. German law shall apply exclusively.
  - 10.2. Changes to a contract must be in written form, as well as any change to this written form clause. A document that is signed and sent by telefax fulfils this contractual written form requirement.
  - 10.3. If the provisions should be or become fully or partially invalid, this shall not affect the validity of the remaining provisions. The missing or invalid provision shall be replaced by the provision that comes closest to the intention of the contracting parties, otherwise the legal provision.
  - 10.4. Kraemer is the controller within the meaning of the Data Protection Act. The customer's personal data shall only be collected, processed or used for the purpose of contract formation, performance and termination. Advertising use shall only take place for the purpose of own advertising, including recommendation advertising. Sending to third parties shall only take place insofar as this is necessary for performance of the contract. The Customer may object to any use of its data for the purpose of advertising, market research or opinion research at any time. The objection shall be addressed by post to Kraemer Baumaschinen GmbH & Co. KG, Ferdinand-Braun-Str. 3, D-33378 Rheda-Wiedenbrück or by e-mail to: info@kraemer24.com.